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No. 08-

OFFICE OF THE CLERK

In The
Supreme Court of the United States

James Widtfeldt et al,
Petitioner, Appellants

v.

Michael Johanns/Ed Schafer, in his capacity as
Secretary of the United States Department of
Agriculture, et al,
Defendants, Appellees

On Appeal From
The United States Court of Appeals
For the Eighth Circuit, 07-1284
US District Court-Nebraska 8:05 CV 49

PETITION FOR A WRIT OF CERTIORARI

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February 5, 2009

WIDTFELDT VS JOHANNNS QUESTIONS

Question Presented and Rule 14 Reasons for Granting Writ of Certiorari

1. BUT FOR REGULATION IN 2000 THROUGH 2003, TOBACCO COULD HAVE PROBABLY BEEN RAISED FOR SIX TIMES MORE THAN CORN OR SOYBEANS RENT, APPELLANT WIDTFELDT IS ENTITLED TO JUDGMENT AGAINST DEFENDANTS ON QUANTUM MERUIT OF SIX TIMES THE RENT FOR CORN ON RESCISSION OF SUBSIDY BY USDA-FSA: The USDA-FSA rescinded eligibility of Widtfeldt as a producer after it was too late for others to qualify, and on arbitrary and capricious standards. However, the USDA-FSA did not complete the rescission, by also rescinding its regulations. A proper USDA-FSA rescission would have allowed Widtfeldt to grow tobacco in 2000 through 2003 at six times the rent from corn or

WIDTFELDT VS JOHANNNS QUESTIONS

soybeans. The USDA-FSA must pay Widtfeldt six times the rent of approximately \$15,000 per field per year, for a total of \$60,000, times the factor of six for profitability of tobacco over corn/ soybeans, or \$360,000, to make Widtfeldt whole for lost use of the premises in growing tobacco.

This is an important federal question under Rule 10 of the US Supreme Court, as previously from about 1930 to about 2004, tobacco was a subsidized and highly regulated farm crop which had no acreage in Nebraska, and now that tobacco is de-regulated and no longer subsidized by the USDA-FSA, tobacco is an important cash crop, producing about ten times more net than other prominent agricultural crops including corn and soybeans.

WIDTFELDT VS JOHANNNS QUESTIONS

2. RENTERS BURIVAL HAVE FILED, (BK 7-42271 AND BK 7-42273 IN US BANKRUPTCY COURT- NEBRASKA) AND OTHER RENTERS APPEAR LIKELY TO FILE BANKRUPTCY DUE TO HIGHER INPUT COSTS AND LOW FARM PRICES DUE TO WALL STREET FINANCIAL CRISIS IN 2008.

Four Widtfeldt renters, some of whom were too late to register, determined by the USDA-FSA to be producers, Gary Burival, Joyce Burival, (BK 07-42271) Richard Burival, and Phillip Burival, (BK 07-42273) filed bankruptcy and could no longer operate Widtfeldt premises and pay rent, in 2007, proving Widtfeldt had risk of loss on crop all along. Burlivals and other renters have always had precarious financing, from 2000 to the present, and Widtfeldt was the producer in 2000 through 2003 and thereafter. Widtfeldt had already reduced rent in return for

WIDTFELDT VS JOHANN'S QUESTIONS

being an operator. In 2008, corn prices (ethanol subsidy) seemed high for most of the summer, but most grain elevators would not allow forward contracting. In the fall of 2008, corn prices are low, and high inputs suggest that many more of Widtfeldt renters will file bankruptcy. It is unfair for the USDA -FSA to change its requirements after Widtfeldt relied on the farm program. The program should be retroactively changed to allow Widtfeldt to farm and be a producer in 2000 through 2004 and receive benefits. An offset against the USDA-FSA payments for loss of payments because of renter bankruptcies should be made.

This is an important federal question, as mass bankruptcies of renters have not previously occurred throwing loss of rent and risk of loss back on the landowner. See Rule 10, US Supreme Court.

WIDTFELDT VS JOHANN'S QUESTIONS

3. USDA OPERATED PLUM ISLAND GERM WARFARE AND THE RESULTING ILLNESS SHORTENS AND HARMS LIVES OF WIDTFELDT AND FAMILY MEMBERS, TRANSFERS RISK OF LOSS TO WIDTFELDT BY IMPOSING HEALTH CARE COSTS ON WIDTFELDT.

The USDA-FSA has long operated a germ warfare plant on Plum Island, New York, and virulent strains of Lyme Disease, West Nile Virus, and Dutch Duck Enteritis have started in the US, beginning in ever expanding circles spreading out from the Plum Island germ warfare plant. At least three of James Widtfeldt relatives appear to have become infected, and only by taking extensive courses of antibiotics, has James Widtfeldt been able to avoid the degree of illness and death shown by other relatives. It is time to cut through the government denials and hold the USDA-FSA accountable. The germ warfare illnesses

WIDTFELDT VS JOHANN'S QUESTIONS

have transferred the risk of loss to Widtfeldt, and have incapacitated Widtfeldt and relatives from operating farm machinery, either directly from illness, or indirectly by requiring high levels of medical care which prevent James Widtfeldt from spending as much time in the field as would be required to be operating machinery throughout the crop season. The risk of loss transferred to Widtfeldt, has been greatly increased by developments in 2008, over what was before the trial court to review.

Exacerbation of problems in 2008 justifies sending this matter back to the trial court with directions to find in favor of James Widtfeldt, in the amounts identified herein. The value of the loss is two wrongful deaths at age 89 and 90, and 20 years of disability beginning at age 44 for a college graduate.

WIDTFELDT VS JOHANNNS QUESTIONS

Until the Connecticut Attorney General brought litigation against the Infectious Disease Society of America in May, 2008 (see front page article, Public Health Alert, www.publichealthalert.org, in Volume 3, Issue 6, June 2008 issue, titled "Attorney General's Investigation Reveals Flawed Lyme Disease Guideline Process -- ISDA Agrees to Reassess Guidelines, Add Independent Arbiter") In other words, the Connecticut courts have decided that chronic Lyme disease, emanating from the germ warfare plant on Plum Island, is now causing illness.

This is an important federal question decided in a way that differs with all other state courts, because previously all medical doctors and state regulations of the medical field (governed by the Infectious Disease Society of America) prevented treatment of chronic lyme disease. See Rule 10, US Supreme Court.

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TABLE OF AUTHORITIES

Appealed orders/judgments

8:05cv 049 US District Court of Nebraska

(Judgment, Memorandum Order,

Judgment and Order on Motion for

Rehearing)

Pages – all

07-1284 in the 8th US Court of Appeals

(Judgment, Memorandum Order,

Judgment & Order En Banc) Pages – all

Page xii Table of Authorities

Widtfeldt v Johanns/Shafer, page 1

PETITION FOR WRIT OF CERTIORARI

Petitioner James Widtfeldt, for himself and James Widtfeldt Trust, now dissolved, hereby petitions for a writ of certiorari to review the September 4, 2008 memo/order and judgment of the US Court of Appeals for the 8th Circuit, with rehearing en banc/in panel October 31, 2008, in the appendix at A1, A7, A8, A9, also appealed. The Court of Appeals refused Widtfeldt's request.

Widtfeldt v Johanns/Shafer, page 2

OPINIONS BELOW

The opinion of the US Court of Appeals, appendix at A2, refused Widtfeldt's request.

The decision of the United States District Court of Nebraska in 8:05 CV 00049-JFB is in appendix A3, and refused Widtfeldt's request.

JURISDICTION

The judgment and order/memo of the 8th Cir Court of Appeals were entered

Widtfeldt v Johanns/Shafer, page 3
on September 4, 2008, see Appendix at
A2, A7, A9, rehearing 10-31-08 at A8.

The memo/order and judgment of
the US District Court-NE on December 11,
2006, appears at A3-A5, and rehearing at
A6 in the appendix, affirmed on re-
hearing. This court has jurisdiction
pursuant to 28 USC 1254(1).

RELEVANT STATUTORY PROVISIONS

Statutory provisions - Appendix A10.

Widtfeldt v Johanns/Shafer, page 4

STATEMENT

This is a case under the Administrative Procedures Act (the "APA") provisions of the United States Department of Agriculture, appearing at 5 USC §§ 706(A)(2), and under the definition of rescission (the "rescission" by the USDA was malicious, designed to harm Widtfeldt far beyond merely terminating eligibility).

REASONS FOR GRANTING WRIT:

Widtfeldt v Johanns, page 5

BUT FOR REGULATION IN 2000
THROUGH 2003, TOBACCO COULD
HAVE BEEN RAISED FOR SIX TIMES
MORE THAN CORN OR SOYBEANS
RENT, APPELLANT WIDTFELDT IS
ENTITLED TO JUDGMENT AGAINST
DEFENDANTS ON QUANTUM
MERUIT OF SIX TIMES THE RENT FOR
CORN ON RESCISSION OF SUBSIDY
BY USDA-FSA:

The case Horn vs Veneman, 319 F.

Widtfeldt v Johanns, page 6

Supp. 2d 902 (Ind. 2004), hereinafter Horn

was appealed to the United States Supreme Court and decided against Horn, under the theory that a subsidy by the government may be revoked at any time, as no consideration is given to make the contract binding. Horn, supra never argued and probably did not have or did not argue the additional factual basis in this case, that the subsidies precluded other crops, such as tobacco at higher rentals, as is being appealed herein. Horn, supra also did not

Widtfeldt v Johanns, page 7

have argument regarding germ warfare
sickness of the parties to be compensated.

The United States Supreme Court may
have been wrong in Horn vs Veneman,
supra, because the US government subsidy
and regulation by the USDA-FSA prevents
farming with more profitable crops, and
USDA-FSA obligation to honor its
subsidies or under rescission, to return
Widtfeldt to the position of no USDA-FSA
regulation or program, which would
require that the USDA-FSA pay Widtfeldt

Widtfeldt v Johanns, page 8

as though no subsidy or regulation to hinder farming, was in effect.

Once the USDA-FSA corn subsidy was approved, resulting in cheap food and cheap exports for the government, rescission of the program benefits requires the defendants herein to return appellant Widtfeldt to conditions of no USDA-FSA regulations or restrictions such as prevented tobacco farming. Additionally, the subsidy and regulations, if removed, would have allowed James Widtfeldt to

Widtfeldt v Johanns, page 9

produce far greater returns on other crops
(such as tobacco).

The value of the services performed
by Widtfeldt, and lost by entering the
USDA-FSA restrictive agreements on
farming, are illustrated by the newspaper
article, "Nicotine Buzz, US Farmers
Rediscover the Allure of Tobacco" in the
September 18, 2007 Wall Street Journal
page A1 article, researched by Lauren
Etter, hereinafter tobacco.

"Mr. Barbre's profitable tobacco

Widtfeldt v Johanns, page 10

business adds a wrinkle to the debate over the farm bill Congress is preparing to take up," at the beginning of the fifth paragraph in the article. The wrinkle is that tobacco is far more profitable without subsidies than with government regulation. Typical farmers net \$1,800 per acre rather than \$250 with corn, so that the government regulations in 2000 through 2004 prevented James Widtfeldt from reaping a 6 times greater rent, or about \$90,000 per year. The government duty to put James

Widtfeldt v Johanns, page 11

Widtfeldt in the same position he would be in without government subsidy, should offset any claim of rescission of the USDA-FSA. The relevant parts of tobacco may be found in Appendix A4.

**RENTERS BURIVAL AND OTHERS
APPEAR LIKELY TO FILE
BANKRUPTCY DUE TO HIGHER
INPUT COSTS AND LOW FARM
PRICES DUE TO WALL STREET
FINANCIAL CRISIS**

Widtfeldt v Johanns, page 12

A financial crisis rivaling the great depression of 1929 through 1940 is occurring in the US and worldwide at this time, starting with Wall Street, Banks and Insurance Companies. Gary Burival, Joyce Burival (BK 07-42271 in the Nebraska Bankruptcy Court), Richard Burival and Philip Burival (BK 07-42273 in the Nebraska bankruptcy court) filed bankruptcy, costing Widtfeldt one year's rent, which should be an offset against the farm program rescission herein.

Widtfeldt v Johanns, page 13

Each recent issue of the Wall Street Journal is headlined with government bailout of the financial system, insurance companies, and more.

The obvious parallel of the US government rescuing businesses which have been too heavily regulated and taxed for many years, applies as well to the USDA - FSA. The USDA simply cannot be allowed to unilaterally rescind government participation long after the registration period expires, without justifying

Widtfeldt v Johanns, page 14

reduction in values of real estate and
reduction in taxes or some related parallel.

USDA OPERATED PLUM ISLAND
GERM WARFARE ILLNESS SHORTENS
AND HARMS LIVES OF WIDTFELDT
AND FAMILY MEMBERS

"Lab 257 -- Caution the Disturbing
Story of the Government's Secret Germ

Widtfeldt v Johanns, page 15

Laboratory" by Michael Christopher

Carroll, ISBN - 13 978-0-06-078184-2 or

ISBN-10: 0-06-078184-x, hereinafter Lab

257, provides considerable research of the author on page 44:

The Secretary of Agriculture is authorized to establish research laboratories . . . For research and study, in the united States or elsewhere, of foot and mouth disease and other animal diseases . . . Provided that no live virus of foot and mouth disease may be introduced for any purpose into any part of the mainland of the

Widtfeldt v Johanns, page 16

United States except coastal islands separated
therefrom by waters navigable for deep water
navigation and which shall not be connected
with the mainland by any tunnel Part of
Public Law 48-496 passed in April 1948.

On page 38 of Lab 257, supra, we
find the following:

Three infectious germs, Bb (Borrelia
Burdorferi, or Lyme disease), West Nile
virus, and duck enteritis virus -- all foreign
germs --- have infiltrated the American
landscape. All three emerged from the

Widtfeldt v Johanns, page 17

same geographic locus. All three occurred
in the vicinity of a high hazard, high
containment foreign germ laboratory with
demonstrably faulty facilities and pitiable
biological safety practices -- flaws that
caused proven germ outbreaks in the past,
and infections among its employees. The
public is asked to accept that none of these
three outbreaks is connected to Plum
Island.

That's what one calls blind faith.

As you read on, consider for yourself

Widtfeldt v Johanns, page 18

whether that assertion has merit.

My sister, Norma Skjold, was infected with the Plum Island version of Lyme disease (far more virulent than historically active versions of the disease), apparently while in Vermont, and became substantially incapacitated and returned to Nebraska in 1993, where her illness has continued to progress, although new treatments have alleviated and sometimes substantially eliminated panic attacks and many other symptoms.

Widtfeldt v Johanns, page 19

Soon after Norma's return, probably before or in May, 2005 at the onset of a severe infection, May, my mother, Gusteva Widtfeldt, developed symptoms of Lyme disease by 1995 (painfully loud hearing and dizziness, over sensitivity to light), resulting in Gusteva's worsening and death in 2006, and my father, Albert Widtfeldt, had a series of "brain-stem strokes", the exact location that Lyme strongly affects, culminating in his death in 1996.

Widtfeldt v Johanns, page 20

The island workforce walked out and went on strike in August 2002. The following June, President George W. Bush moved the laboratory from the USDA to the new Department of Homeland Security. Page 219, Lab 257, supra.

Chapter 12, starting on page 191 of Lab 257, supra, describes Hurricane Bob hitting Lab 257 in August, 1991, with devastating consequences. Lyme, Connecticut, had experienced Lyme disease outbreaks long before 1991 (Lyme

Widtfeldt v Johanns, page 21

disease was first isolated from diseased persons in Lyme, Connecticut and named after Lyme, Connecticut.)

On page 264, third paragraph, of Lab 257, we find:

And yet, there's still an unexplained initial outbreak of Lyme disease occurring nine miles away from an exotic germ laboratory with quarter inch holes in its roof -- a lab busy breeding hundreds of thousands of ticks including a tick known to spread Lyme disease with African Swine

Widtfeldt v Johannis, page 22

fever virus cross-contaminated with who
knows what that is worthy of a real
scientific investigation.

CONCLUSION

But for the government regulation,
and later disqualification of Widtfeldt to be
a "producer" in 2000 through 2003, and
continuing regulation of other crops such
as tobacco until 2004 (paragraph 8 of the
Wall Street Journal tobacco article), James
Widtfeldt was prevented, and is still

Widtfeldt v Johanns, page 23

substantially prevented by government regulations through the FSA, from making 6 times the corn crop rental, that is, 6 times the approximately \$15,000 per quarter for rent on the irrigated portion of a quarter square mile, which for two quarters would be \$180,000, and for two years, \$360,000.

Widtfeldt requests this court to order defendant USDA-FSA to pay James

Widtfeldt the balance of the \$180,000 in addition to the FSA payments at issue herein.

Widtfeldt v Johanns, page 24

Losses on bankrupt renters also give Widtfeldt a risk of loss in the crop, and bankruptcy losses to Widtfeldt, totaling or likely to total in excess of \$40,000 should be an offset against the rescission of payments herein (\$17,500 claim in Burival Bankruptcies likely to be changed to higher amount as Burival never signed a lease in last year of bankruptcy, another renter likely to exceed that in losses).

The defendants herein have exhibited on many cases a personal and

Widtfeldt v Johanns, page 25

governmental meanness without parallel.

Not only has the government denied responsibility for germ warfare agents loosed on the Widtfeldt family and many others, but continual bullying and harassment designed to eliminate any peaceful possession of property has continued unabated. The vicious nature of the germ warfare onslaught, which was enough to enable the previously defeated Russian army to prevail at Stalingrad during World War II, is employed by the

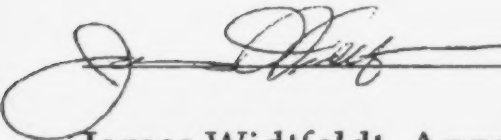
Widtfeldt v Johanns, page 26

US government and its various agents to tortiously interfere with James Widtfeldt's life at every turn. See "Biohazard - the Chilling True Story of the Largest Covert Biological Weapons Program in the World -- Told from Inside by the Man Who Ran It", by Ken Alibek,, ISBN0-385-33496-6, hereinafter Bio. Pages 31, 35, and the second page of pictures between pages 82-83 of Bio, describe how Russian germ warfare changed the outcome of the Battle of Stalingrad, and the outcome of World

Widtfeldt v Johanns/Shafer, page 27

War II, leading to intense research and
competing government germ war fare
programs world wide.

Respectfully

 February 5, 2009

James Widtfeldt, Appellant

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IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JAMES A. WIDTFELDT, d/b/a

JAMES WIDTFELDT TRUST, Plaintiff,

vs.

MICHAEL JOHANNNS, UNITED STATES

DEPARTMENT OF AGRICULTURE, and

MONTE FLETCHER,

RICHARD KILMURRY,

BONNY KILMURRY,

HILGER BROTHERS PARTNERSHIP,

GARY A. BURIVAL,

JOYCE A. BURIVAL,

And EDWIN BURIVAL

Defendants.

Appeal from the District Court of Nebraska 8:05

cv 49,

Page i, appendix A1

Case: 07-1284 9-4-08 and 10-31-08 Addendum A1

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

October 31, 2008

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Case: 07-1284 9-4-08 Addendum A2

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 07-1284

James Widtfeldt, James Widtfeldt Trust,
Plaintiffs, Appellants

v.

Michael Johanns, et al

Appeal from District of Nebraska - Omaha
(8:05 cv00049-JFB)

JUDGMENT

This appeal from the United States District Court was submitted on the record for the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in
Page i of A2 appendix

Case: 07-1284 9-4-08 Addendum A2

accordance with the opinion of the court.

September 4, 2008.

Order Entered in Accordance with

Opinion:

Clerk, U.S. Court of Appeals, Eighth

Circuit.

/s/ Michael E. Gans.

IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF
NEBRASKA

JAMES A. WIDTFELDT, d/b/a
JAMES WIDTFELDT TRUST, Plaintiff,
vs.

MICHAEL JOHANNNS, UNITED STATES
DEPARTMENT OF AGRICULTURE, and
MONTE FLETCHER,
RICHARD KILMURRY,
BONNY KILMURRY,
HILGER BROTHERS PARTNERSHIP,
GARY A. BURIVAL,
JOYCE A. BURIVAL,
And EDWIN BURIVAL
Defendants.

Page i, appendix A3

8:05 cv 49, JUDGMENT

In accordance with the Memorandum and Order entered on this date, it is hereby ORDERED, ADJUDGED, AND DECREED that summary judgment is granted in favor of defendants and against plaintiff.

Plaintiff's amended complaint is dismissed with prejudice.

Dated this 11th day of December 2006.

BY THE COURT:

S/Joseph Bataillon

Chief United States District Judge.

Tobacco WSJ article Addendum A4

Nicotine Buzz -- US Farmers Rediscover the Allure of Tobacco -- End of Subsidy System Brings Higher Profits; Lessons for Mr. Barbre, by Lauren Etter, page A1 in September 18, 2007 Wall Street Journal, hereinafter tobacco.

Paragraph 5, page A1 of Wall Street Journal:
Second sentence:

Even factoring in higher labor and other costs, he's netting up to \$1,800 an acre from his 150 acres of tobacco, compared with \$250 an acre from his corn.

Paragraph 7, page A13 of Wall Street Journal

"Mr. Barbre's profitable tobacco business adds a wrinkle to the debate over the farm

Page i, Appendix A4

Tobacco WSJ article Addendum A4

bill Congress is preparing to take up.
Many farmers say that without the system
of subsidies for commodities like corn,
cotton and soybeans, they'd be at risk of
going under. But critics say the system
fosters inefficiency, distorts international
trade and supports mainly the wealthiest
farmers. Now these critics can point to
tobacco as evidence that subsidies are
unnecessary."

Case: 8:05-cv-00049-JFB-PRSE Doc #: 47

Date Filed: 12/11/2006 Page 1 Addn A5

IN THE UNITED STATES DISTRICT
COURT

FOR THE DISTRICT OF NEBRASKA

JAMES WIDTFELDT, and JAMES

WIDTFELDT TRUST,

Plaintiffs,

v.

MICHAEL JOHANNNS, UNITED

STATES DEPARTMENT OF

AGRICULTURE, MONTE FLETCHER,

RICHARD KILMURRY, BONNY

KILMURRY, HILGER BROTHERS

Case: 8:05-cv-00049-JFB-PRSE Doc #: 47

Date Filed: 12/11/2006 Page 2 Addn A5

PARTNERSHIP, GARY A. BURIVAL,

JOYCE A. BURIVAL, and EDWIN

BURIVAL,

Defendants.

8:05CV49

MEMORANDUM AND ORDER

Plaintiff, James Widtfeldt, filed this action

seeking judicial review of a final agency

determination by the National Appeals

Division (NAD) of the United States

Department of Agriculture (USDA)

concerning a determination by the Farm Services Agency (FSA) that plaintiff owes the Commodity Credit Corporation (CCC) approximately \$29,106, plus interest in overpayments. Plaintiff received program payments for crop years 2000 and 2001, but was later determined ineligible under program requirements. The parties have filed cross-motions for summary judgment based on the Administrative Record of the United States Department of Agriculture. (Filing Nos. 33 and 41.) For the reasons

stated below, the court finds that the National Appeals Division of the United States Department of Agriculture did not abuse its discretion.

FACTUAL BACKGROUND

The USDA is responsible for administering all statutes and regulations pertaining to the CCC, the Production Flexibility Program ("PFP"), and the FSA. The PFP was created as part of the Agricultural Market Transition Act Title I of the Federal Agriculture Improvement and Reform Act

of 1996 to provide producers of certain crops with declining, yearly monetary assistance (referred to as production flexibility payments) over a period of seven years while phasing out traditional commodity price supports. *See generally* Christopher R. Kelley, *Recent Federal Farm Program Developments*, 4 Drake J. Agric. L. 93, 99 (1999). Accordingly, the CCC entered into seven-year contracts with eligible producers in return for annual market assistance payments. *See* 7 U.S.C.

§§ 7211-7212 (2002). & 7 C.F.R. §

1412.201(a) (2002). The PFP is administered under the general supervision of the CCC and carried out by state, county, or area FSA committees. Enrollment in the PFP was limited to a relatively short time period between April 4 and August 1, 1996. *See* 7 U.S.C. § 7212(a)(1) & (2). The Market Loss Assistance ("MLA") Program was first enacted in 1998 and its purpose was to supplement the PFP payments producers received. 7 U.S.C. § 1421.

Program payments were linked to the
eligibility for Production Flexibility

Contracts (PFC). 7 U.S.C. § 1421. Plaintiff

James Widtfeldt owns and leases farmland

in Holt County, Nebraska. On May 2, 2000,

plaintiff executed a Form CCC-478 PFC

where he identified himself as replacing

Gusteva Widtfeldt as the producer on

Farm Serial Number 3628 (FSN 3628).

(Administrative Record at 176, 181.) In his

designation of program payments, plaintiff

claimed 100 percent interest in the FSN

3628 Production Flexibility acres for both the 2000 and 2001 crop years. Between May 25, 2001, and August 21, 2001, plaintiff received around \$29,106 in PFC and MLA payments. *Id.* at 160.

In 2000 and 2001, plaintiff, as trustee for the Albert Widtfeldt Trust, entered into three leases for FSN 3628. The first set of leases for the years 2000 and 2001 was with the Hilger Brother Partnership, the leases were signed only by the Hilger Brothers Partnership. (Administrative Record at 68-

71). Under the terms of these leases, the Hilger Brothers Partnership agreed to pay plaintiff \$10,000 annually while plaintiff paid for the maintenance of the irrigation system. (Administrative Record at 68-71, Testimony from James Widtfeldt on hearing Tapes 1 and 2.) The leases also stated that plaintiff would retain all government payments from the property. (Administrative Record at 69 and 71.)

Next, plaintiff entered into a lease with Richard and Bonnie Kilmurry for 2001 and

2002. Under the terms of this lease, the Kilmurrays paid \$24,500 annually to plaintiff. (Administrative Record at 72-74.)

The Kilmurrays were also responsible for the farm operating costs. *Id.* The lease stated that plaintiff would retain all government payments from the property. *Id.* at 73-74. This lease was signed by both parties. *Id.* The final lease was with Gary, Joyce and Edwin Burival. The parties entered into two separate but identical leases for the years 2000 and 2001.

(Administrative Record at 62-67.) The lease for the year 2000 was not signed by either parties, and the lease for 2001 was signed only by the Burivals. (Administrative Record 65, 67.) Under the terms of this lease, the Burivals agreed to pay plaintiff \$11,000 annually. The Burivals paid for all of the operating costs, while plaintiff paid for maintenance costs on the irrigation equipment and purchased a new irrigation system. (Administrative Record at 379, 519, testimony from James Widtfeldt on

Hearing Tapes 2 and 3.) This lease also stated that plaintiff was to receive all government payments on the leased properties. (Administrative Record at 63, 66.) On November 19, 2003, the FSA's County Executive Director requested that plaintiff provide evidence to show that he was eligible to earn the PFC and MLA payments for crop years 2000 and 2001. (Administrative Record at 172.) A hearing was held to determine plaintiff's eligibility, and on January 28, 2004, FSA

notified plaintiff that it determined he was ineligible for the 2000 and 2001 PFC and MLA payments and requested that the payments be refunded. (Administrative Record at 160.) This determination was made based on the FSA's conclusion that plaintiff lacked the risk in the crop production on his farm. On February 23, 2004, plaintiff requested FSA to reconsider its decision. It is of note that in plaintiff's complaint he makes reference to program payments for the years 2002-

2006; however, plaintiff has already
appealed a decision challenging his 2002
program payments to the District Court
and this claim was dismissed with
prejudice. (Administrative Record at 452-
460.) Further, plaintiff did not exhaust his
administrative remedies with respect to
any program payments for the years 2003-
2006. Therefore, this court will only
address the decision regarding the 2000
and 2001 overpayments. (Administrative
Record at 261.) On July 30, 2004, FSA

affirmed its January 28, 2004, decision.

(Administrative Record at 472.) On August 10, 2004, plaintiff appealed the FSA's decision to the National Appeals Division of the United States Department of Agriculture arguing that plaintiff shared in the risk of the production of the crops in 2000 and 2001. The NAD Hearing Officer upheld the FSA's determination.

(Administrative Record at 473.) On November 15, 2004, plaintiff filed a request for a Director Review of the NAD's

Hearing Officer's determination issued on October 29, 2004, and requested equitable relief. (Administrative Record at 485.) In its review the Director framed the issue before him as whether the FSA complied with its regulations when it determined that appellants were required to refund PFC and MLA payments, explaining that it needed to answer the specific questions: (1) did plaintiff's lease agreements with Third Parties cause appellants to be ineligible for 2000 and 2001 PFC and MLA payments;

and (2) have appellants established a basis for equitable relief. (Administrative Record at 471.) After reviewing the applicable regulations and relevant facts, the Director concluded that the FSA's determination that plaintiff was ineligible for program payments both because the leases between plaintiff and the third parties were cash leases and because there was no basis for equitable relief were not erroneous. The plaintiff now seeks review of this decision.

DISCUSSION

A. Jurisdiction

Based on the foregoing discussion, the court finds that plaintiff, Widtfeldt, has exhausted his administrative remedies. See 7 U.S.C. § 6912(e). This court has jurisdiction pursuant to 28 U.S.C. § 1331, 7 U.S.C. § 6999, and 28 U.S.C. § 2201. 1

B. Standard of Review

1. Summary Judgment

Summary judgment is proper if no disputed issues of material fact exist and

the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c);

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). The court must view the

evidence and the inferences which may be reasonably drawn from the evidence in the light most favorable to the nonmoving

party. *Matsushita Elec. Indus. Co. v. Zenith*

Radio Corp., 475 U.S. 574, 587 (1986). Where

unresolved issues are primarily legal as

opposed to factual, summary judgment is

particularly appropriate. *Mansker v. TMG*

Life Ins. Co., 54 F.3d 1322, 1326 (8th Cir.

1995). On a motion for summary judgment, the question before the court is whether the record, when viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(c); *Mansker v. TMG Life Ins. Co.*, 54 F.3d at 1326.

2. Administrative Procedure Act

The decision by the NAD Director is

reviewed under the Administrative

Procedure Act (APA). *See Lane v. United*

States Department of Agriculture, 120 F.3d

106, 108-09 (8th Cir. 1997). The APA, at 5

U.S.C. § 706, sets out the scope of review:

To the extent necessary to decision and

when presented, the reviewing court shall

decide all relevant questions of law,

interpret constitutional and statutory

provisions, and determine the meaning or

applicability of the terms of an agency

action. The reviewing court shall-(1)

compel agency action unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. Agency action is arbitrary and capricious only where it is not supportable on any rational basis. *First Nat'l Bank of Fayetteville v. Smith*, 508 F.2d 1371, 1376 (8th Cir. 1974), cert. denied, 421 U.S. 930 (1975); *Churchill*

Truck Lines, Inc. v. United States, 624 F.2d

63, 65 (8th Cir. 1980). "The court is not

empowered to substitute its judgment for

that of the agency." *Citizens to Preserve*

Overton Park v. Volpe, 401 U.S. 402, 416

(1971). In making the foregoing

determinations, the court shall review the

whole record or those parts of it cited by a

party, and due account shall be taken of

the rule of prejudicial error.

C. Applicable Statutes and Regulations

The Federal Agriculture Improvement and

Reform Act of 1996, 7 U.S.C. § 7201 *et seq.*, allowed producers on farms with wheat, corn, barley, grain, sorghum, oats upland cotton and rice crop acreage bases the opportunity to enter into PFCs. The Market Loss Assistance program allowed producers eligible for PFCs to receive MLA payments. However, as a prerequisite to receiving payments under these programs a landowner must meet the eligibility requirements. When a landowner leases his land, he is eligible to receive PFC and

MLA payments as outlined in 7 C.F.R. §

1412.202(a) The relevant language provides that an owner of a farm is "eligible to enter into a contract [if he or she]. . . (a) assumes all or part of the risk of producing a crop."

7 C.F.R. § 1412.202(a). 7

C.F.R. § 1412.303(a)(5) provides that "If the lease is a cash lease, the landlord is not eligible for a contract payment." The applicable regulations define a cash lease as follows: "if the lease provides for only a guaranteed sum certain cash payment, or a

fixed quantity of the crop (for example, cash, pounds, or bushels per acre)." 7

C.F.R. § 1412.303(a)(2). By contrast, a share lease is defined as "a lease [that] contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof." 7 C.F.R.

1412303(a)(3).

D. Agency Determination

The Director determined that plaintiff was ineligible for the program payments because he leased his farmland based on cash leases. Plaintiff's arguments challenging this determination are not persuasive. Plaintiff first argues that because the leases stated that the PFC and MLA payments should be distributed to him "the lease is and should be the final word as to the matter." This is simply not the case. Plaintiff's lease must meet the statutory and regulatory

authority governing program payments and cannot contract around these guidelines. Plaintiff received program payments for farmland that was leased to three separate parties. Each lease contained a set amount plaintiff would receive in dollars for the use of the land. Nowhere in the leases did plaintiff condition the amount of money received on the risk of crop production. Furthermore, other than simply stating the leases speak for themselves, plaintiff has failed to set forth

any legal argument challenging the Director's determination that plaintiff lacked the necessary risk for program eligibility. Next, plaintiff argues that because the USDA allowed him to sign up for the program payments, as a matter of equity he is entitled to the payments based on Mistake. The Director reasoned that relief could be available if the producer relied on, and took action based on, information from an agency representation that was false. But here there is no

evidence in the record, nor does plaintiff point to any facts in the record that support an argument that he believed he was entitled to the program payments due to information given to him by an agency representative. Furthermore, as the government points out, plaintiff is trained in the law and therefore should have the ability to review the relevant legal authority and draft a farm lease that complied with this authority. Plaintiff failed to do so. Therefore, based on a

review of the relevant statutory and regulatory program guidelines and the Administrative Record, the director's determination was not arbitrary, capricious, abuse of discretion, or otherwise not in accordance with law. Plaintiff's remaining arguments are difficult to decipher but relate to the valuation of his property and his status with the Nebraska State Bar. These issues are not relevant to the Agency decision in this case and do not raise relevant issues of

fact or law.

E. Leasees

A review of the record shows that the leasees were served with process in these proceedings. However, the plaintiff raises no claims against them and they have asserted no claims in this case. Therefore, they are dismissed from this litigation.

CONCLUSION

Based on a review of the administrative record and the filings by the parties, the court finds and concludes that the agency's

determination was not arbitrary or capricious, abuse of discretion, or otherwise not in accordance with the law, and finds in favor of the defendants and against the plaintiff.

IT IS ORDERED:

1. That summary judgment is granted in favor of defendants (Filing No. 41) and against plaintiff (Filing No. 33).
2. Plaintiff's motion to allow additional time to file a reply brief (Filing No. 46) is denied as moot.

Case: 8:05-cv-00049-JFB-PRSE Doc #: 47

Date Filed: 12/11/2006 Page 35 Addn A5

2. A separate judgment will be entered.

DATED this 11th day of December, 2006.

BY THE COURT:

s/ Joseph F. Bataillon

Chief United States District Judge

IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF
NEBRASKA

JAMES WIDTFELDT, and JAMES
WIDTFELDT TRUST,

Plaintiffs,

v.

MICHAEL JOHANNNS, in his capacity as

Secretary of the United States

Department of Agriculture, UNITED

STATES DEPARTMENT OF

AGRICULTURE, MONTE FLETCHER, in

his official capacity as Holt County

Executive Director of the United States

Farm Service Agency, an Agency of the

United States Department of Agriculture,

RICHARD KILMURRY, BONNY

KILMURRY, HILGER BROTHERS

PARTNERSHIP, GARY A. BURIVAL,

JOYCE A. BURIVAL, and EDWIN

BURIVAL,

Defendants.

MEMORANDUM AND ORDER

This matter is before the court on plaintiff James Widtfeldt's Motion for a New Trial, Amendment of Judgment (Filing No. 49).

Because there was never a trial in this case, the court presumes that plaintiff meant to file his motion as a motion for reconsideration. The court has carefully reviewed plaintiff's motion and Affidavit (Filing No. 50) and concludes that the motion to reconsider is without merit.

Therefore, plaintiff's motion is denied.

IT IS ORDERED:

1. That plaintiff's motion for a New Trial, Amendment of Judgment (Filing No. 49) is denied; and

2. The Clerk of Court is directed to send a copy of this Memorandum and Order to plaintiff at his last known address.

DATED this 4th day of January, 2007.

BY THE COURT:

s/Joseph F. Bataillon

JOSEPH F. BATAILLON

United States District Judge

1Ed Schafer has been appointed to serve as
the Secretary of the United States
Department of Agriculture, and is
substituted as an appellee pursuant to
Federal Rule of Appellate Procedure 43(c).
United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 07-1284

James Widtfeldt; James Widtfeldt *

Trust, *

*

090408 US8th Ct App Order-Memo p. 2
Appn A7

Appellants, *

* Appeal from the United States

v. * District Court for the

* District of Nebraska.

Ed Schafer,¹ in his capacity as Secretary *

of the United States Department of *

[UNPUBLISHED]

Agriculture; United States Department *

of Agriculture; Monte Fletcher, in his *

official capacity as Holt County *

Executive Director of the United States *

Farm Service Agency, an Agency of *

the United States Department of *

Agriculture; Richard Kilmurry; Bonny *

Kilmurry; Hilger Brothers Partnerships; *

Gary A. Burival; Joyce A. Burival; *

Edwin Burival, *

*

Appellees. *

Submitted: August 29, 2008

Filed: September 4, 2008

Case: 07-1284 Page: 1 Date Filed:

09/04/2008 Entry ID: 3467204

2The Honorable Joseph F. Bataillon, Chief

Judge, United States District Court
for the District of Nebraska.

Before WOLLMAN, SMITH, and
GRUENDER, Circuit Judges.

PER CURIAM.

James Widtfeldt appeals the district court's
adverse grant of summary judgment in this
action for declaratory and injunctive relief
under the Administrative Procedure Act
(APA), 5 U.S.C. § 706(1) & (2), challenging
an order of the United States Department

of Agriculture (USDA), which found him ineligible for federal farm subsidies for the years 2000 and 2001 and required him to refund approximately \$29,000 in payments he received for those years. Upon *de novo* review, we agree with the district court that the USDA's decision was not arbitrary, capricious, an abuse of discretion, or otherwise inconsistent with the law. See *Voyageurs Nat'l Park Ass'n v. Norton*, 381 F.3d 759, 763 (8th Cir. 2004) (appellate standard of review and applicable legal standard under APA).

090408 US8th Ct App Order-Memo p. 6
Appn A7

Accordingly, the judgment of the district
court is affirmed. See 8th Cir. R. 47B.

Case: 07-1284 Page: 2 Date Filed: 09/04

/2008 Entry ID

**UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT**

No: 07-1284 James Widtfeldt and James
Widtfeldt Trust, Appellants v. Michael
Johanns, in his capacity as Secretary of the
United States Department of Agriculture,
et al., Appellees

Appeal from District of Nebraska -

Omaha

(8:05-cv-00049-JFB)

ORDER

the United States Department of
Agriculture; Richard Kilmurry; Bonny
Kilmurry; Hilger Brothers Partnerships;
Gary A. Burival; Joyce A. Burival; Edwin
Burival, Defendants - Appellees

Appeal from District of Nebraska - Omaha
(8:05-cv-00049-JFB)

JUDGMENT

This appeal from the United States District
Court was submitted on the record of the
district court and briefs of the parties.

After consideration, it is hereby ordered
and adjudged that the judgment of the
district court in this cause is affirmed in
accordance with the opinion of this Court
September 04, 2008 Order Entered in
Accordance with Opinion: Clerk, U.S.
Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Case: 07-1284 Page: 1 Date Filed:

09/04/2008 Entry ID: 3467206

APPENDIX A10 Relevant Statutory
Provisions Page 1

Administrative Procedures Act 5 USC

§§706(a)(2), page 4 of Petition for Certiorari

Public Law 48-496, April 1948 enabling
legislation for Lab 257, see page 44, and at
page 16 of Petition for Certiorari

Appendix A5, Dec. 11, 2006 Memo and

Order laws:

7 U.S.C. §§ 7211-7212 (2002), and 7 C.F.R.

§1412.201 (a) (2002) Annual Market

Assistance Payments

7 U.S.C. § 1421 PFP payments and Market

Loss Assistance programs.

Note at appendix 5, page 11, that the copies

of leases of Burivals were not signed by

Widtfeldt, as there was more to the

agreement than those given, and all the

original agreements had been delivered to

the FSA prior to any payments being made.

Notwithstanding the agreements, the

subsequent bankruptcies reversed the risk

of loss to Widtfeldt, as provided in the

defaults provision of the agreements, and

Widtfeldt in fact lost all pay and all crops

due to various shenanigans in the BK 07-

42271 and 42273 bankruptcy cases of
Burivals, establishing risk of loss on
Widtfeldt.

Note that at appendix a5, page 12,
the local FSA pretended not to have the
leases on November 19, 2003, and then re-
opened the eligibility, even though the
leases (the originals) were required by the
FSA to be delivered prior to any payments
being made.

7 U.S.C. §6912(e) Exhaustion of remedies.

28 U.S.C. §§ 1331, 7 U.S.C. §6999, and 28

U.S.C. § 2201 give Jurisdiction to the US

District Court.

7 U.S.C. § 7201 Federal Agricultural

Improvement and Reform Act of 1996,

allowed PFC contracts

7 C.F.R. §1412.202(a), and uC.F.R. §

1412.303(a)(5), quoted on page 26, that "if

the lease is a cash lease, the landlord is not

eligible for a contract payment", where a

cash lease is a "lease providing for only a

guaranteed sum certain cash payment, or a

fixed quantity of the crop". In this case,

the lease relied on default provisions of

liens on the crop, and the "guarantee" did

not exist, the renters filed bankruptcy and never paid. Even the Widtfeldt lien on the crop, a highest lien because it was filed while the crop was in the field, was unavailing of any pay. Latest reports suggest the bankrupts expect to pay no more than 5 percent of the lien amount on the crop, showing conclusively that Widtfeldt has and always did have the risk of loss on the crop.

130

(2)

Supreme Court, U.S.

FILED

MAY 11 2009

OFFICE OF THE CLERK

No. 08-1007

In The
Supreme Court of the United States

James Widtfeldt et al,
Petitioner, Appellants

v.

Thomas Vilsack, formerly Michael Johanns, in his
capacity as Secretary of the United States Department
of Agriculture, et al,
Defendants, Appellees

On Appeal From
The United States Court of Appeals
For the Eighth Circuit, 07-1284
Nebraska US District Court 8:05 CV 49

**PETITION FOR RULE 44 REHEARING ON WRIT
OF CERTIORARI**

James Widtfeldt
PO Box 877, 103 East State
Atkinson, Nebraska 68713
Tel 402/925-2535
Fax 402/925-2564
Email: techtute@yahoo.com

May 11, 2009

Page 1 Pet'n for Re-Hearing 4-20-09 Order

**PETITION FOR RE-HEARING ON
PETITION FOR WRIT OF CERTIORARI**

Petitioner James Widtfeldt et al,
respectfully petitions for a re-hearing on
the petition for writ of certiorari to review
the judgment of the United States Court of
Appeals for the Eighth Circuit in this case,
appearing in the appendix to the Petition
for Certiorari.

Petitioner requests that the Order of
April 20, 2009, communicated by William
K. Suter, (on partially obscured letterhead),

Page 2 Pet'n for Re-Hearing 4-20-09 Order
but what is legible states Supreme Court of
the United States, Office of the Clerk,
Washington, DC 20543-0001, William K.
Suter, Clerk of the Court, 202-479-3011,
and addressed to:

Clerk, United States Court of Appeals for
the Eighth Circuit, Thomas F. Eagleton
Courthouse, 111 South 10th Street, Room
24329, St. Louis, MO 63102, RE: James
Widtfeldt vs Thomas J. Vilsack, Secretary
of Agriculture et al, No. 08-1007, (Your No.
07-1284) as follows: Dear Clerk: "The

Page 3 Pet'n for Re-Hearing 4-20-09 Order
Court today entered the following order in
the above entitled case: "The Petition for
Writ of Certiorari is denied."

OPINION BELOW

On April 20, 2009, the United States
Supreme Court entered its order, "The
petition for a writ of certiorari is denied."

The other decisions below are as
stated in the Petition for Writ of Certiorari.

JURISDICTION

Page 4 Pet'n for Re-Hearing 4-20-09 Order

This court already seized jurisdiction for the reasons shown in the Petition for Writ of Certiorari, in entering its Order of April 20, 2009.

RELEVANT STATUTORY PROVISIONS

I. ASSIGNMENT OF PAYMENTS 7

USC § 7995

II. AMENDMENT 5 US

CONSTITUTION

Page 5 Pet'n for Re-Hearing 4-20-09 Order

Amendment 5, US Constitution, land values dropping, "now you see it, now you don't" farm subsidies are a major factor in massive collapse of United States economy in 2008-2009, and different policies should be adopted.

III. BURIVAL BANKRUPTCIES
SHOW, WITH EACH DAY, MONTH,
AND YEAR OF THE BANKRUPTCY,
THAT RISK OF LOSS IN CROPS WAS
ALWAYS ON WIDTFELDT, AND

Page 6 Pet'n for Re-Hearing 4-20-09 Order

WIDTFELDT WAS A PRODUCER
NOWMORE THAN EVER, AS
BURIVALS WERE ALREADY
PROBABLY OF NEGATIVE NET
WORTH IN YEAR 2000, AND
BURIVALS WERE UNABLE TO SUFFER
RISK OF LOSS FOR THE REASON
THEIR LOSSES CONSUMED THEIR
WHOLE ASSETS IN 2000, BURIVALS
WERE ALREADY BANKRUPTCY BAIT
IN 2000, PROBABLY AT ALL TIMES
INCLUDING AND FOLLOWING 2000,

Page 7 Pet'n for Re-Hearing 4-20-09 Order
**AND PROBABLY LONG BEFORE THAT
YEAR.**

STATEMENT

This is a case involving a grant of
various USDA subsidies which were
improperly revoked.

I. ASSIGNMENT OF PAYMENTS 7

USC § 7995

"The provisions of section 590h(g) of

Page 8 Pet'n for Re-Hearing 4-20-09 Order

Title 16, relating to assignment of payments, shall apply to payments made under the authority of this Act. The producer making the assignment, or the assignee, shall provide the Secretary with notice, in such manner as the Secretary may require, of any assignment made under this section."

All the Widtfeldt renters have properly signed assignments to Widtfeldt of any government payments in issue, all in proper form, and all timely done.

The USDA-FSA is not allowed to rescind assigned payments, particularly where most or all assignees are not producers nor are assignees required to be producers.

II. AMENDMENT 5 US CONSTITUTION

Amendment 5, US Constitution, land values dropping, "now you see it, now you don't" farm subsidies are a major factor in massive collapse of United

Page 10 Pet'n for Re-Hearing 4-20-09 Order

**States economy in 2008-2009, and
different policies should be adopted.**

Daily news of the recession occurring under the Obama administration shows that real estate has been greatly over-valued, and that the government taxes are in violation of the 5th amendment of the US Constitution, an unlawful taking of private property by taxing at values far in excess of actual values, and that in fact, the over valuation of real estate for purpose of loans and tax assessments is a precipitating

factor in causing the massive nationwide recession, and far in excess of the statutory rates.

The government has cleverly issued "subsidies" and then reneged or demanded return of the subsidies, after first using misguided and tentative subsidies to provoke higher apparent real estate values, and higher real estate taxes, than warranted by the actual market conditions. Widtfeldt land valuations would not have been nearly so high, and

real estate taxes would not have been nearly so onerous, but for the USDA tactic of inciting over - valuations of real estate through arbitrary and capricious granting and revocation of USDA subsidies, leading private investors such as Widtfeldt astray.

This court should require this matter to go to hearing on the Petition for Certiorari, and the lower decisions should all be reversed and require the subsidies to be honored and any rescission of Widtfeldt subsidies should in turn be be rescinded so

Page 13 Pet'n for Re-Hearing 4-20-09 Order
that Widtfeldt is not required to refund
any government payments made.

**III. BURIVAL BANKRUPTCIES
SHOW, WITH EACH DAY, MONTH,
AND YEAR OF THE BANKRUPTCY,
THAT RISK OF LOSS IN CROPS WAS
ALWAYS ON WIDTFELDT, AND
WIDTFELDT WAS A PRODUCER
NOWMORE THAN EVER, AS
BURIVALS WERE ALREADY
PROBABLY OF NEGATIVE NET**

Page 14 Pet'n for Re-Hearing 4-20-09 Order

**WORTH IN YEAR 2000, AND
BURIVALS WERE UNABLE TO SUFFER
RISK OF LOSS FOR THE REASON
THEIR LOSSES CONSUMED THEIR
WHOLE ASSETS IN 2000, BURIVALS
WERE ALREADY BANKRUPTCY BAIT
IN 2000, PROBABLY AT ALL TIMES
INCLUDING AND FOLLOWING 2000,
AND PROBABLY LONG BEFORE THAT
YEAR.**

Any risk of loss which the USDA has

Page 15 Pet'n for Re-Hearing 4-20-09 Order

claimed to be suffered by Burivals is
clearly not sustained or suffered or shared
by Burivals in any way, shown by
Burivals' bankruptcy. Burivals, and
probably others of Widtfeldt renters, were
among the walking dead or walking
wounded, suffering from financial wounds
which were too severe to be bound up, in
2000. This court needs to hear this appeal
to avoid further disasters in running the
US economy. Burivals have been
operating on borrowed money and

Page 16 Pet'n for Re-Hearing 4-20-09 Order
borrowed time, and have passed all risk of
loss to Widtfeldt and other Burival
creditors, on all crops from 2000 and later.

The renters who, according to the
government, should have received the
subsidies, have in at least two cases, that of
Gary and Joyce Burival, and their sons,
Philip and Richard Burival, Nebraska
Bankruptcy BK 07-42271&42273, ceased
business and their real estate sold, and all
without payment of Widtfeldt rent. In
other words, the USDA efforts to declare

Widtfeldt not a producer are completely unavailing, and daily shown to be more and more inaccurate, as the USDA identified producers are bankrupting out of the picture, not having any risk of loss, and Widtfeldt in fact had the risk of loss and was a producer, ever since and including the year 2000. Again, Widtfeldt "renters" had no risk of loss, including and since 2000 -- Burivals were insolvent, financially broke, or hopelessly over extended beginning even before the year

Page 18 Pet'n for Re-Hearing 4-20-09 Order

2000, and Burivals have and did not suffer any more or less because of crop size since 2000. Or earlier. Widtfeldt renters were already headed for bankruptcy and their creditors owned the risk of loss. Burival creditors, and especially Widtfeldt, have suffered losses, not Burivals, on any Burival crop.

Any final decision refusing to honor the subsidies,

The relevant statutory provisions are as shown in the Petition for Writ of Certiorari.

CONCLUSION

Petitioner respectfully requests that each of Widtfeldt renters in the years 2000 through the present have assigned their government payments to James Widtfeldt, which pursuant to 7 USC 7995. The assignment of payments to Widtfeldt takes this matter out of the claimed rescission, as

Page 21 Pet'n for Re-Hearing 4-20-09 Order

James Widtfeldt

PO Box 877, 103 East State Street

Atkinson, Nebraska 68713

Tel 402/925-2535

Fax 402/925-2564

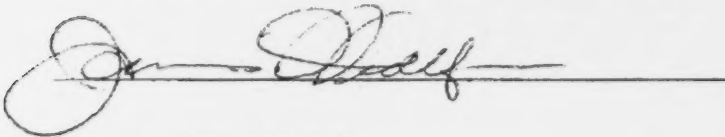
techtute@yahoo.com

CERTIFICATE OF RULE 44

Comes now James Widtfeldt and
certifies that this Petition for Rehearing is:

- a) presented in good faith and not for
delay

- b) this certificate will follow and be attached to each copy of the Petition for Rehearing;
- c) filing fee of \$200 is enclosed;
- d) this petition for rehearing is limited to intervening circumstances, namely, developments in renter bankruptcy which cause 7 USC § 7995 to be more relevant than in the Petition for Certiorari.

A handwritten signature in dark ink, appearing to read "James Widtfeldt", is written over a horizontal line.

James Widtfeldt